

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GARDEN CITY BOXING CLUB, INC.

Plaintiff,

-against-

07 CV. 4789 (WCC)

NP JUNIOR, INC.,
d/b/a CAFÉ NOVITA BAR
and NICK PERRIELLO
and NICHOLAS PERRIELLO

Defendants.

-----X

REPLY MEMORANDUM OF LAW

RICHARD B. HERMAN, ESQ.

RICHARD B. HERMAN, LLC
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(212) 868-9300

*Attorneys for Defendants NP Junior, Inc. d/b/a Café Novita Bar,
Nick Perriello and Nicholas Perriello*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GARDEN CITY BOXING CLUB, INC.

Plaintiff,

-against-

AFFIRMATION
07 CV. 4789 (WCC)

NP JUNIOR, INC.,
d/b/a CAFÉ NOVITA BAR
and NICK PERRIELLO
and NICHOLAS PERRIELLO

Defendants.

-----X

RICHARD B. HERMAN, an attorney duly admitted to practice law in this Court hereby affirms and swears:

1). I represent the defendants, NP JUNIOR, INC. d/b/a CAFÉ NOVITA BAR, NICK PERRIELLO and NICHOLAS PERRIELLO, in the above-captioned matter and submit this Reply Affirmation in support of Defendants' Pre-Trial motions and in opposition to plaintiff's Affirmation in Opposition.

2). This affirmation is submitted upon information and belief based upon a review of all materials and the file.

3). All facts necessary for a determination of the instant motion are set forth in the accompanying Memorandum of Law and the Memorandum of Law submitted on February 22, 2008 (which are incorporated herein by reference).

WHEREFORE, on behalf of all defendants in the above captioned matter, your affirmant prays for an Order granting the following motion or, in the alternative, a hearing to

determine the issues in question.



RICHARD B. HERMAN

Dated: New York, New York
March 31, 2008

PRELIMINARY STATEMENT

On February 22, 2008, defendant corporation, NP JUNIOR, INC., d/b/a/ CAFÉ NOVITA BAR, and individual defendants, NICK PERRIELLO and NICHOLAS PERRIELLO, submitted a Notice of Motion, Attorney Affirmation, Memorandum of Law and Exhibits in support of the individual defendants' arguments to dismiss the complaint against them. On March 24, 2008, after obtaining a one week extension to file, plaintiff, GARDEN CITY BOXING CLUB, INC.,

ARGUMENT

**PLAINTIFF’S AFFIRMATION IN OPPOSITION IS TECHNICALLY DEFICIENT
AND TRACKS THE LANGUAGE OF THE COMPLAINT WITHOUT FURTHER
ARGUMENT**

Before addressing the factual allegations in Plaintiff’s Motion, it should be noted that the motion itself is defective as Plaintiff neglected to include a Memorandum of Law. Pursuant to Local Civil Rule 7.1, the Southern District of New York requires all motions and oppositions to be accompanied by a Memorandum of Law:

Except as otherwise permitted by the court, all motions and all oppositions thereto shall be supported by a memorandum of law, setting forth the points and authorities relied upon in support of or in opposition to the motion, and divided, under appropriate headings, into as many parts as there are points to be determined. Willful failure to comply with this rule may be deemed sufficient cause for the denial of a motion or for the granting of a motion by default.

Here, plaintiff submitted an “Affirmation in Opposition,” which simply tracks the language of the complaint with minimal legal argument or authority. Plaintiff once again cited passages from the Federal Communications Act of 1934, stated that the defendants’ arguments

are wrong and concluded that “it is clear thatthe individual defendants committed the actual act... .” (Plaintiff Affirmation, ¶19). There is no additional support for this “argument” and plaintiff fails to address the case law or corporate veil piercing requirements in the State of New York that were outlined in defendants’ motion. Based upon the clear wording in the Local Rules, plaintiff’s submission is woefully deficient and is reason enough to grant defendants’ motion.

Nonetheless, putting aside the technical defects of plaintiff’s response, the plaintiff makes no argument in support of its attempt to pierce the corporate veil of defendant, NP JUNIOR, INC., other than a bald assertion that defendants’ argument does not apply to this case. Unlike the plaintiff, however, the defendants cited numerous cases regarding the distinct and separate nature of a corporate entity in its moving papers. In response, plaintiff simply pointed to the language of the statute and the availability of an individual cause of action.

The defendants do not dispute that there is an individual cause of action under the Federal Communications Act. For instance, if plaintiff could prove that defense counsel manipulated his cable box to enjoy the de la Hoya fight in the comfort of his own home, a cause of action against defense counsel would be wholly appropriate. What is at issue here, however, is whether the individual cause of action applies to defendants, NICK and NICHOLAS PERRIELLO, and the defense once again submits that it does not. All business conducted by Novita Café was done so in the name of the corporation, NP JUNIOR, INC.

Plaintiff is asking this Court to undermine the well-settled rule that a corporation is an entity distinct from its shareholders, *See In re Gibraltar Amusements, Limited*, 291 F.2d 22 (2d Cir. 1961), a move Courts do not make lightly. Piercing the corporate veil is the issue here despite plaintiff’s contentions. However, it is the exception and not the rule and an exception

should not be made in this case. The corporate veil of NP JUNIOR, INC. should not be pierced and the complaint should be dismissed as against individual defendants, NICK PERRIELLO and NICHOLAS PERRIELLO.

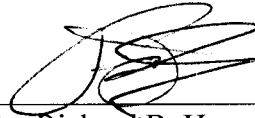
CONCLUSION

FOR THESE REASONS, on behalf of individual defendants, NICK PERRIELLO and NICHOLAS PERRIELLO, your affirmant prays for an Order granting the following motion or, in the alternative, a hearing to determine the issues in question.

Dated: New York, New York
March 31, 2008

Respectfully submitted,
RICHARD B. HERMAN, LLC

*Attorneys for Defendants NP Junior, Inc.,
Nick Perriello and Nicholas Perriello*



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